

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

UNITED STATES OF AMERICA

VS.

CRIMINAL NO. 3:16CR54-HTW-FKB

MARK LONGORIA

PLEA HEARING

BEFORE THE HONORABLE HENRY T. WINGATE
UNITED STATES DISTRICT JUDGE
AUGUST 3RD, 2016
JACKSON, MISSISSIPPI

APPEARANCES:

FOR THE GOVERNMENT: MR. DARREN J. LaMARCA
MR. PATRICK A. LEMON

FOR THE DEFENDANT: MR. THOMAS M. FORTNER

REPORTED BY: MARY VIRGINIA "Gina" MORRIS, RMR, CRR

501 E. Court, Suite 2.500
Jackson, Mississippi 39201
(601) 608-4187

1 THE COURT: You may be seated. Call your case,
2 please.

3 MR. LaMARCA: Your Honor, before the court is *United*
4 *States v. Mark Longoria*, criminal number 3:16cr54.
5 Mr. Longoria is present with his attorney, Thomas Fortner, and
6 is present, your Honor, for a change of plea as to an
7 information.

8 THE COURT: All right. Please approach the podium.
9 (COMPLIED WITH REQUEST)

10 THE COURT: Good morning.

11 MR. FORTNER: Good morning, your Honor.

12 THE COURT: And, counsel, you're with your client?

13 MR. FORTNER: Yes, your Honor. Good afternoon, your
14 Honor. I'm Tom Fortner, and I am representing Mark Longoria
15 who is present standing beside me in court.

16 THE COURT: All right. And hello to both of you.

17 THE DEFENDANT: Hello, your Honor.

18 THE COURT: Now, I understand that your client wishes
19 to enter a plea of guilty to a criminal information.

20 MR. FORTNER: That is correct, your Honor.

21 (PAUSE)

22 THE COURT: All right. To the defendant, I need to
23 ask you some questions, and these questions must be answered
24 under oath and truthfully. So at this time I'll have the
25 courtroom deputy swear you in.

1 (DEFENDANT ADMINISTERED THE OATH)

2 THE COURT: Now, do you understand that you have now
3 been sworn?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you further understand that if you
6 answer any of my questions untruthfully that you could be
7 prosecuted for perjury?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And do you know what perjury is?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Perjury, of course, is lying under oath.
12 So you do understand that.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Now, how old are you?

15 THE DEFENDANT: 53.

16 THE COURT: How much schooling do you have?

17 THE DEFENDANT: I have an associate's degree, sir.

18 THE COURT: From?

19 THE DEFENDANT: Alamance Community College.

20 THE COURT: Say it again.

21 THE DEFENDANT: Alamance Community College.

22 THE COURT: Where is that located?

23 THE DEFENDANT: That's located in Burlington, North
24 Carolina.

25 THE COURT: And did you complete the full two years of

1 that study?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And how long ago was that?

4 THE DEFENDANT: About 1991, your Honor.

5 THE COURT: So then you can read and write.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: I have to ask that question for the
8 record, notwithstanding that you've told me that you've
9 graduated. Have you taken any drugs of any type, prescription
10 drugs or nonprescription drugs, or consumed any alcoholic
11 beverages within the last 24 hours?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And what have you taken?

14 THE DEFENDANT: I have a prescription for Adderall for
15 ADD and probably a cocktail.

16 THE COURT: All right. Are any of those medications
17 affecting you adversely, that is, affecting your ability to
18 understand what is happening here?

19 THE DEFENDANT: No, sir.

20 THE COURT: Are any of those medications vital to your
21 physical or mental health so that the court should be
22 forewarned just in case you suffer the cause of some ailment?

23 THE DEFENDANT: No, sir.

24 THE COURT: Have you ever been treated by any doctor,
25 psychiatrist or psychologist or in any hospital, clinic or

1 mental institution for any mental disease or disorder?

2 THE DEFENDANT: Only ADD, your Honor.

3 THE COURT: And for the record, would you describe
4 what ADD is?

5 THE DEFENDANT: Having trouble focusing and
6 concentrating. So they prescribe Adderall to, you know, help
7 you stay on point.

8 THE COURT: And you're talking about attention deficit
9 disorder?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And how long have you suffered with this
12 particular problem?

13 THE DEFENDANT: As far as I know, all my life.

14 THE COURT: And has it gotten worse in any particular
15 problem -- any particular time?

16 THE DEFENDANT: As long as I'm taking my meds, your
17 Honor, I'm okay.

18 THE COURT: So your medicine compensates?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And it deals with that particular ailment?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And how often do you take that medication?

23 THE DEFENDANT: When I really need to focus, you know.
24 So I don't take it every day, your Honor. I take it, you know,
25 every few days.

1 THE COURT: And have you taken any today?

2 THE DEFENDANT: No, sir.

3 THE COURT: Have you felt the need to take any today?

4 THE DEFENDANT: No. I had one yesterday. So, you
5 know, sometimes it gets me real jittery and everything. So,
6 no, I haven't had a need to take it today, your Honor.

7 THE COURT: What symptom would you display if you need
8 that drug?

9 THE DEFENDANT: The best way I can describe it, your
10 Honor, is trying to stay focused on one task instead of moving
11 from one task to another, back and forth for multi- -- multiple
12 tasks, you know, and not completing any of them.

13 THE COURT: I see. So, again, at present are you
14 having any difficulty in that regard?

15 THE DEFENDANT: No, sir.

16 THE COURT: In order to enter a valid plea, you must
17 be mentally competent. That means you're able to understand
18 what is happening here today. That also means you're able to
19 appreciate and weigh the advice of your attorney. So under
20 this definition of competence which directs itself at whether
21 you are able to appreciate the seriousness of this hearing too,
22 are you mentally competent today?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Then I have to ask whether you're mentally
25 competent to understand the difference between right and wrong

1 as that definition would apply to the dates of the criminal
2 information. Now, have you read the criminal information?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And how many times have you read it?

5 THE DEFENDANT: Probably five -- the documents have
6 been provided to me multiple times, your Honor.

7 THE COURT: And did you understand them?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Any questions about them?

10 THE DEFENDANT: No, sir.

11 THE COURT: And did you see what dates were mentioned
12 in here?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And so let's look at the criminal
15 information. You see the date of August 2013 in paragraph 4?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: There's another date of August 1, 2013, in
18 paragraph 5.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And then there's another date of
21 August 20th, 2013, in paragraph 6.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: As well as in paragraph 7 there's a date
24 of September 16, 2013.

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And then May 20th, 2014, is in paragraph
2 8; and in 9, June 17, 2014. You saw those dates?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Similarly, there are some dates in Count 1
5 of the indictment. And, again, there's August 2013. There's
6 the date of September 16, 2013; and paragraph 15, the date of
7 June 17, 2014. So these are dates which are alleged in the
8 criminal information and there might be others. But with
9 regard to all of the dates that are alleged in the criminal
10 information, on those dates did you know the difference between
11 right and wrong?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: On those dates did you know that your
14 actions were wrong as alleged by the United States Attorney's
15 Office?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: So then I turn to you, Mr. Fortner. Are
18 you satisfied that your client is competent in all respects?

19 MR. FORTNER: I am, your Honor.

20 THE COURT: Both with regard to knowing the difference
21 between right and wrong and also in regard to today where he is
22 able to appreciate the consequences of this hearing?

23 MR. FORTNER: Yes, sir, your Honor.

24 THE COURT: Let me turn now to the prosecution.
25 Mr. LaMarca, are you satisfied as to the defendant's

1 competence?

2 MR. LaMARCA: I am, your Honor.

3 THE COURT: Thank you. Inasmuch as both counsel here
4 are satisfied that this defendant is competent in all regards
5 and inasmuch as the defendant himself admits that he is indeed
6 competent in all regards, the court accepts that he is
7 competent to know the difference between right and wrong, that
8 he was competent in that respect on the dates charged in the
9 criminal information, that he is competent today to appreciate
10 his actions in entering a plea to the criminal information.

11 Now, let me discuss this matter of representation by
12 counsel. The law requires that you be adequately represented
13 by your lawyer. Have you had enough time to discuss this case
14 with your lawyer?

15 THE DEFENDANT: Yes, sir, your Honor.

16 THE COURT: Are you satisfied with his advice to you?

17 THE DEFENDANT: Yes, sir, your Honor.

18 THE COURT: Are you satisfied with the amount of time
19 he's spent with you?

20 THE DEFENDANT: Yes, sir, your Honor.

21 THE COURT: Do you understand that if you have any
22 complaints at all about the way he's handled your case that you
23 should make that known to the court now?

24 THE DEFENDANT: Yes, sir, your Honor.

25 THE COURT: Do you further understand that if you have

1 complaints but choose for whatever reason not to mention those
2 complaints at this time, that should you mention those
3 complaints at a later date the court may consider those
4 complaints waived because you didn't raise them at this
5 hearing, the appropriate time to do so? Do you understand
6 that?

7 THE DEFENDANT: Yes, sir, your Honor.

8 THE COURT: So, then, do you have any complaints at
9 all about the way your lawyer has handled your case?

10 THE DEFENDANT: No, sir.

11 THE COURT: I move now to your constitutional rights.
12 I'm sure that Mr. Fortner has explained your constitutional
13 rights; but to be sure that you understand these rights, I need
14 to go over them again with you.

15 Do you understand that you are entitled to a trial by
16 jury if you want one; and even though you've stated that you
17 wish to enter a plea of guilty, you can still change your mind
18 and request a trial and the court will afford you a trial? Do
19 you understand that?

20 THE DEFENDANT: Yes, sir, your Honor.

21 THE COURT: Do you understand that this trial that the
22 court will afford you can be either a bench trial or a trial by
23 jury? Do you understand that?

24 THE DEFENDANT: Yes, sir, your Honor.

25 THE COURT: Do you know the difference?

1 THE DEFENDANT: I would believe that one's going to
2 have 12 people or so and the other one's not --

3 THE COURT: That is correct.

4 THE DEFENDANT: -- just the judge.

5 THE COURT: That is correct. I will be judge and jury
6 if it's a bench trial. If it's a jury trial, then you would
7 have 12 persons duly selected from the community who would
8 serve as the judges of fact. You understand that?

9 THE DEFENDANT: Yes, sir, your Honor.

10 THE COURT: So then if you choose to be tried by a
11 jury, do you understand that I will impanel 12 persons who will
12 then determine whether you're guilty or not guilty of the
13 charges?

14 THE DEFENDANT: Yes, sir, your Honor.

15 THE COURT: Have you ever seen jury selection?

16 THE DEFENDANT: Only on TV, your Honor.

17 THE COURT: What happens is that the clerk in the --
18 that the jury clerk in the clerk's office will summons by
19 random lot persons from the community. Those names will be
20 drawn then by the jury clerk to form a panel of potential
21 jurors. Again, they'll be randomly called. And then those
22 names will be given to your side, to the prosecution and we
23 will start jury selection.

24 At jury selection I will speak to the panel, welcome
25 them here, tell them what their broad duties will be. And then

1 the prosecution will have an opportunity to ask that panel
2 various questions, questions that will touch on their
3 qualifications to serve. And after that your attorney would
4 have the right to address that same panel and ask questions
5 that your attorney deemed to be material and relevant as to
6 that duty to serve.

7 After that through a procedure by which the court will
8 allow both sides to offer challenges, the court will then
9 determine who are the 12 jurors who are remaining; and then
10 they will be the ones who will be sworn in to try your case.
11 Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you further understand that during this
14 jury selection process that all of the impaneled members of the
15 jury will be sworn to give correct answers to the questions
16 submitted to them by the court, the questions submitted by the
17 prosecution and the questions submitted by your attorney? Do
18 you understand that?

19 THE DEFENDANT: Yes, sir, your Honor.

20 THE COURT: Now, I have referred to your attorney
21 having this right to question the jury. But do you understand
22 that throughout my conversation with you now, that while I
23 might refer to your attorney, I'm embracing you in that same
24 definition, because this is your case and he is your
25 representative. So then you are the one who really has the

1 guiding hand in this litigation, because it's your case.

2 So he will speak for you; but, nevertheless, if you
3 make a decision that you wish to be honored, even if your
4 attorney disagrees with you, then the court will honor your
5 decision. Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: So then during the jury selection process,
8 through a later method of strikes, the court will determine the
9 12 persons who should sit on the jury. And, again, your
10 attorney will participate, prosecution will participate; and
11 each side will strike, that is ask to excuse, certain jurors
12 whom you feel shouldn't sit in judgment on this case either for
13 the prosecution or for the defense. Do you understand that?

14 THE DEFENDANT: Yes, sir, your Honor.

15 THE COURT: So then those persons would be the judges
16 of the facts; and during the course of the trial, I will be the
17 judge of the law. I will rule on objections during the course
18 of the trial. I will maintain order, preserve decorum. I will
19 instruct the jury at the end of the case as to what the law is,
20 but the judges of the facts will be the jury.

21 The jury will listen to all of the evidence in the
22 case. The jury will listen to the testimony of the witnesses.
23 The jury will see the documents received into evidence. The
24 jury will hear the opening statements and closing statements of
25 the lawyers, and then the jury will hear the instructions of

1 law provided by me at the end of the trial when I will tell the
2 jury what the law is. And then the jury will retire to
3 deliberate upon this verdict. Do you understand all that?

4 THE DEFENDANT: Yes, sir, your Honor.

5 THE COURT: And the jury's verdict must be unanimous.
6 Unanimous. 12 persons on the jury will deliberate and those 12
7 persons would have to reach a unanimous decision in the case.
8 So it can't be a partial decision, six vote one way and six
9 vote another way, and then still they say we've reached a
10 decision. It has to be 12 to vote guilty before you could be
11 convicted. Anything short of that would be a hung jury. Do
12 you understand that?

13 THE DEFENDANT: Yes, sir, your Honor.

14 THE COURT: Any questions about that whatsoever?

15 THE DEFENDANT: No, sir, your Honor.

16 THE COURT: Now, during the course of the trial I will
17 advise the jury at the very top of the trial that you are
18 presumed to be innocent. I will tell the jury that until the
19 jury reaches a determination that you are guilty and that
20 verdict is accepted by the court, you are still presumed to
21 be -- presumed to be -- did I say guilty a few minutes ago?

22 THE DEFENDANT: No, sir, your Honor.

23 THE COURT: Presumed to be innocent. Do you
24 understand that?

25 THE DEFENDANT: Yes, sir, your Honor.

1 THE COURT: So I will explain to the jury that that
2 presumption will carry you throughout the trial and that a
3 defendant can rely upon that presumption no matter. So since
4 the law presumes you are innocent, that presumption can take
5 the place of witnesses or exhibits or anything else, because
6 you would not have to produce any witnesses in order to be
7 found not guilty. Do you understand that?

8 THE DEFENDANT: Yes, sir, your Honor.

9 THE COURT: You would not have to produce any exhibits
10 to be found not guilty. Do you understand that too?

11 THE DEFENDANT: Yes, sir, your Honor.

12 THE COURT: In other words, your lawyer -- remember I
13 told you the two of you operating together under this same
14 definition -- can simply indicate to the court that you do not
15 wish to call any witnesses, you do not wish to submit any
16 exhibits, that you simply want to argue to the jury as to the
17 weight, of the effect of the evidence that's submitted by the
18 prosecution.

19 And you don't even have to do that. You can still say
20 *I waive that too*. And if a jury is dissatisfied with the
21 prosecution's case, the jury could find you not guilty based
22 upon the presumption of innocence. Do you understand that?

23 THE DEFENDANT: Yes, sir, your Honor.

24 THE COURT: Now, the prosecution, on the other hand,
25 has to produce exhibits -- evidence, and the prosecution would

1 have to submit evidence for a jury to find you guilty. And
2 look at it the way I explained it so far. While the
3 prosecution has to produce evidence to prove that you are
4 guilty, a jury could find you innocent even though you produce
5 no evidence solely on the basis of that presumption of
6 innocence. Do you understand that?

7 THE DEFENDANT: Yes, sir, your Honor.

8 THE COURT: So now let's talk about the prosecution.
9 So in order to prove you guilty, the prosecution would have to
10 call some witnesses. These witnesses must be sworn, and your
11 attorney would have the right to cross-examine these witnesses
12 once they have testified on direct examination, that is, once
13 they have offered some testimony supplied by the prosecution's
14 questions.

15 After that your attorney can question their
16 credibility, can question their knowledge of the facts or
17 anything germane to their testimony that the defense feels the
18 jury should consider. Do you understand that?

19 THE DEFENDANT: Yes, sir, your Honor.

20 THE COURT: With regard to exhibits, the prosecution
21 may offer exhibits. And, of course, your attorney may object
22 to the exhibits, just as your attorney may object to a witness'
23 testimony, if the attorney finds there's some glitch in the
24 testimony or exhibits which questions whether those documents
25 or testimony meet the standards required by the rules of

1 evidence. Do you understand all of that?

2 THE DEFENDANT: Yes, sir, your Honor.

3 THE COURT: Now, that's the prosecution's burden to
4 prove its case against you by proof beyond a reasonable doubt.
5 Now, have you heard that term before?

6 THE DEFENDANT: Yes, sir, your Honor.

7 THE COURT: Proof beyond a reasonable doubt. That
8 means that for a jury to convict you the jury would have to say
9 by that verdict that the jury has no reasonable doubt
10 concerning your guilt. The prosecution does not have to prove
11 its case by proof beyond all doubt or proof beyond a shadow of
12 a doubt or proof beyond a scintilla of a doubt, terms used on
13 television. The prosecution's burden is proof beyond a
14 reasonable doubt. Do you understand that?

15 THE DEFENDANT: Yes, sir, your Honor.

16 THE COURT: So during this course of the trial
17 proceedings, what would you have to prove? The answer is
18 nothing. You would not have to prove your innocence at all.
19 You would not have to produce any witnesses at all. You would
20 not have to produce any exhibits at all. You would not have to
21 testify at all. And if you were to elect not to testify, I
22 will inform the jury that the jury could not use your election
23 against you. Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: On the other hand, if you elect to

1 testify, I will advise the jury that the jury is to weigh and
2 consider and analyze your testimony just as the jury does so
3 with every other witness, that is, not to apply any special
4 rule concerning you or to apply the same rules of engagement
5 with you and your testimony as a jury should apply regarding
6 every other witness. Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Now, do you have any questions about
9 anything I have been discussing with you?

10 THE DEFENDANT: No, sir.

11 THE COURT: Now, during the trial the prosecution may
12 offer objections to various matters. During the trial your
13 lawyer may offer objections to various matters. So do you
14 understand that if there are objections offered during the
15 course of the trial, I'll will rule on those objections before
16 those matters, the subject of the objections, can be considered
17 by the jury? Do you understand that?

18 THE DEFENDANT: Yes, sir, your Honor.

19 THE COURT: Any questions about that?

20 THE DEFENDANT: No, sir, your Honor.

21 THE COURT: Now, I said that you would not have to
22 offer any evidence whatsoever. But do you understand that you
23 have a right to offer whatever evidence on this matter that you
24 may wish to do?

25 THE DEFENDANT: Yes, sir, your Honor.

1 THE COURT: You can call witnesses.

2 THE DEFENDANT: Yes, sir, your Honor.

3 THE COURT: You can offer exhibits.

4 THE DEFENDANT: Yes, sir, your Honor.

5 THE COURT: You can testify.

6 THE DEFENDANT: Yes, sir, your Honor.

7 THE COURT: All those are your choices. Do you
8 understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And do you further understand those
11 choices will belong to you and you alone? Do you understand
12 that?

13 THE DEFENDANT: Yes, sir, your Honor.

14 THE COURT: Now, if you plead guilty and if I accept
15 your plea of guilty, do you understand that you will be waiving
16 all of these rights I have been explaining to you?

17 THE DEFENDANT: Yes, sir, your Honor.

18 THE COURT: Do you still wish to proceed with entering
19 a plea of guilty to the criminal information?

20 THE DEFENDANT: Yes, sir, your Honor.

21 THE COURT: So now let's talk about that criminal
22 information. Have you received a copy of this criminal
23 information?

24 THE DEFENDANT: Yes, sir, your Honor.

25 THE COURT: Now, do you know what a criminal

1 information is and how it differs from an indictment?

2 THE DEFENDANT: The attorney just briefly explained it
3 to me as we got it, your Honor.

4 THE COURT: Okay. Let's talk about an indictment
5 first. The Seventh Amendment to the United States Constitution
6 prescribes that felonies cannot proceed to a conviction/trial
7 unless preceded by an indictment by a grand jury. Now, do you
8 know what a grand jury is? You've probably heard the term --

9 THE DEFENDANT: Yes, sir, I've heard the term.

10 THE COURT: -- but you might not be that conversant
11 with it, a grand jury. A grand jury was conceived way back in
12 1215. The citizenry were disturbed that the king could haul
13 them into court just on his say-so without any involvement or
14 confirmation by the citizenry.

15 At the time these good citizens were ready to rebel in
16 England and they were tired of this particular practice. So
17 the king then agreed to -- oh, let me see, get my history
18 straight -- the Magna Carta. And what it said was that the
19 king cannot proceed to indictment unless there is a grand jury
20 of people who will determine whether charges being brought
21 should be brought.

22 Now, later on when this country began, the framers of
23 our Constitution decided that this was a very good practice.
24 So they planted this idea in our Constitution, that is, in the
25 Seventh Amendment to the Constitution, and the Seventh

1 Amendment being part of the Bill of Rights. So then what it
2 says is that in order for a defendant to be required to stand
3 trial on a felony, that defendant has to be indicted, charged
4 formally by a grand jury.

5 A grand jury is selected at random. So that same
6 clerk of court we talked about earlier who deals with jury
7 matters will go in her computer, pull out a bunch of names
8 randomly, and those names will be submitted to the court. The
9 court then will call in the U.S. attorney and allow the
10 U.S. attorney -- and, of course, a court reporter will be
11 present -- to hear the proceedings.

12 The judge will read a lengthy charge to the grand jury
13 advising the grand jury of the history of the grand jury,
14 advising the grand jury of its duties in this respect, advising
15 the grand jury that they are supposed to form a bulwark, that
16 is a wall, between the citizenry and the excess of the king's
17 power. That is they are supposed to review the charges being
18 levied against an individual and to determine whether those
19 charges possessed any validity or grist or probable cause.

20 Now, I said "or probable cause," but, quite frankly,
21 that is what the grand jury is supposed to review, that is,
22 whether the authorities have shown by probable cause to believe
23 that a crime has occurred, that a certain crime has occurred.
24 The grand jury is supposed to determine whether by probable
25 cause the authorities are asking them to indict the proper

1 person.

2 So then under this proceeding, the grand jury is
3 comprised of about 23 citizens, thereabout; and they then meet
4 with the U.S. Attorney's Office. The United States Attorney's
5 Office then tries to satisfy those two prongs I've just been
6 discussing with you: Probable cause to believe that a crime
7 has occurred, probable cause to believe that the individual
8 being addressed is a person who should be indicted.

9 And so then the grand jury -- so then the
10 U.S. attorney presents evidence before the grand jury. The
11 witnesses are sworn. A court reporter is present, and the
12 court reporter takes down all of the proceedings. The defense
13 is not present. The defendant who is the target of the grand
14 jury's inquiry is not present unless the defendant later waives
15 his presence and wishes to be present for a session on certain
16 rules.

17 But the grand jury looks at the evidence and then
18 determines whether to indict the person who is targeted. If
19 the grand jury agrees that the person should be indicted, then
20 the grand jury returns what is called a true bill. If the
21 grand jury is not satisfied, then the grand jury returns a no
22 bill. The grand jury can return this indictment on a vote of
23 12. So even though there may be 23 people on the grand jury,
24 as long as 12 agree to return the indictment, the indictment
25 will be returned.

1 That indictment is not under that standard called
2 proof beyond a reasonable doubt. That indictment is returned
3 under a standard of probable cause, probable cause to believe
4 that a crime has occurred, probable cause to believe that the
5 person who is the subject committed the crime. Probable cause.
6 Now, that's the grand jury. Any questions about the grand
7 jury, which works in secret?

8 The grand jury, as I said, will have a court reporter
9 present at all times. And at the appropriate time the
10 defendant if indicted can have a copy of what transpired in the
11 grand jury under the appropriate rules. Do you understand all
12 of this?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Any questions about any of this about the
15 grand jury's authority?

16 THE DEFENDANT: No, sir.

17 THE COURT: Now, the grand jury I said will listen to
18 witnesses generally called by U.S. Attorney's Office. But keep
19 in mind that the grand jury is an independent body from the
20 United States Attorney's Office. The grand jury if it wishes
21 can refuse to hear the witnesses that the prosecution may
22 tender to it. On the other hand, the grand jury may choose to
23 call witnesses not meant to appear before the grand jury by the
24 United States Attorney's Office.

25 The grand jury is an independent body, independent of

1 the U.S. Attorney's Office, independent of the judge's office
2 and, since the defense is not there whatsoever, independent of
3 the defense. Do you understand all that?

4 THE DEFENDANT: Yes, sir, your Honor.

5 THE COURT: Now, does any of that surprise you on the
6 powers of the grand jury?

7 THE DEFENDANT: No, sir, your Honor.

8 THE COURT: And when the grand jury determines that
9 someone should be indicted, then they fill out the indictment;
10 and the foreperson of the grand jury signs the indictment
11 indicating that the grand jury has indicted this person by the
12 proper procedure and by the proper vote. And remember what I
13 said the proper vote is? 12 of the grand jurors would have to
14 vote for the indictment. Do you understand that?

15 THE DEFENDANT: Yes, sir, your Honor.

16 THE COURT: A criminal information is different. By a
17 criminal information, we know that it falls outside the
18 constitution guarantee of the Seventh Amendment. The Seventh
19 Amendment speaks to indictments by the grand jury. The
20 criminal information can go forward only when the defendant
21 says, *I will go forward under the criminal information.*

22 So in an instance where the government wants to
23 readily, quickly charge someone with a felony where they do not
24 wish to wait to submit the matter to a grand jury, where the
25 U.S. Attorney's Office has had communication with the defendant

1 and the defendant agrees, the United States Attorney's Office
2 can draw up a criminal information. And then if the defendant
3 agrees to go forward on that document, the court can proceed on
4 that criminal information just as though the action was the
5 action of a grand jury. Do you understand that?

6 THE DEFENDANT: Yes, sir, your Honor.

7 THE COURT: So do you understand that with regard to
8 this criminal information I cannot go forward on this unless
9 you waive action by a grand jury on this particular charge?

10 THE DEFENDANT: Yes, sir, your Honor.

11 THE COURT: Do you wish to go forward on this criminal
12 information?

13 THE DEFENDANT: Yes, sir, your Honor.

14 THE COURT: Now, Mr. LaMarca, has he appeared before
15 the magistrate judge?

16 MR. LaMARCA: Yes, he has.

17 THE COURT: And at that appearance was he submitted
18 any documents which impact on whether he is waiving action
19 before the grand jury?

20 MR. LaMARCA: He did, your Honor. He executed along
21 with his counsel a waiver of indictment which was presented to
22 the magistrate judge.

23 THE COURT: And when was that?

24 MR. LaMARCA: About an hour ago.

25 THE COURT: Okay. Would you -- can you bring it up?

1 Do you have a copy of it?

2 MR. LaMARCA: I do not have a copy. It was submitted.

3 THE COURT: Was it filed?

4 MR. LaMARCA: It has been --

5 THE COURT: Okay.

6 MR. LaMARCA: -- I presume filed. It was certainly
7 handed to the magistrate judge.

8 THE COURT: Okay. Thank you. So, Mr. Longoria, with
9 regard to this whole process I've been describing, apparently
10 as described by the magistrate judge, do you have any questions
11 whatsoever on the thrust and effect of a criminal information?

12 THE DEFENDANT: No, sir, your Honor.

13 THE COURT: And are you ready to proceed on the
14 criminal information?

15 THE DEFENDANT: Yes, sir, your Honor.

16 THE COURT: Now, let's talk about this criminal
17 information. Have you read it?

18 THE DEFENDANT: Yes, sir, your Honor.

19 THE COURT: You told me you read it numerous times.
20 Right?

21 THE DEFENDANT: Yes, sir, your Honor.

22 THE COURT: I trust that you have read it.

23 THE DEFENDANT: Yes, sir, your Honor.

24 THE COURT: But I need to go back over it so the
25 record is clear that you have. Now, it's in two pages -- well,

1 actually, like two and a half pages. So I'm going to let you
2 have a seat, you and your attorney, while I read this
3 indictment. And then when I finish, you can return to the
4 podium. All right?

5 THE DEFENDANT: Yes, sir, your Honor.

6 (COMPLIED WITH REQUEST)

7 THE COURT: So follow along with me on this document
8 because I'm now about to read this indictment -- this criminal
9 information into the record.

10 The United States attorney charges:

11 1: The Mississippi Department of Corrections, MDOC,
12 was a state government agency as that term is defined in
13 Section 666(d), Title 18, United States Code, and which
14 received benefits in excess of \$10,000 annually between 2013
15 and 2014 under federal programs providing federal assistance to
16 MDOC.

17 2: Christopher B. Epps was the commissioner of the
18 MDOC.

19 3: The defendant, Mark Longoria -- how do you
20 pronounce your last name?

21 THE DEFENDANT: Longoria, sir.

22 THE COURT: All right. Mark Longoria was an officer
23 of the Drug Testing Corporation of Houston, Texas.

24 4: In August 2013, the MDOC awarded Drug Testing
25 Corporation the contract to sell to the MDOC drug test cups for

1 drug screening.

2 5: On or about August 1, 2013, Drug Testing
3 Corporation entered a commission agreement with Investigative
4 Research, Inc., a company owned by Cecil McCrory.

5 6: On or about, August 20th, 2013, Drug Testing
6 Corporation invoiced the MDOC for the sale of drug test cups in
7 the amount of \$632,336.25.

8 7: On or about September 16, 2013, after receiving
9 payment from the MDOC, Drug Testing Corporation remitted a
10 check to Investigative Research, Inc., in the amount of
11 \$194,837.50.

12 Page two, paragraph 8: On or about May 20th, 2014,
13 Drug Testing Corporation invoiced the MDOC for a second sale of
14 drug test cups in the amount of \$149,940.

15 9: On or about June 17, 2014, after receiving payment
16 from the MDOC, Drug Testing Corporation remitted a check to
17 Investigative Research, Inc., in the amount of \$34,997.64.

18 We start with Count 1, paragraph 10. The allegations
19 contained in paragraphs 1 through 9 of this indictment -- it
20 says "indictment" here, but it should be "criminal
21 information" -- are realleged and incorporated herein by
22 reference as though fully set forth herein.

23 Paragraph 11: From in or about August 2013 and
24 continuing until at least August 2014, in Hinds and Rankin
25 Counties in the Northern Division of the Southern District of

1 Mississippi and elsewhere, the defendant, Mark Longoria, did
2 knowingly and intentionally combine, conspire, confederate and
3 agree with Christopher B. Epps and Cecil McCrory to influence
4 or reward Christopher B. Epps in connection with the business,
5 transaction or series of transactions of the Mississippi
6 Department of Corrections involving something of value of
7 \$5,000 or more, that is, the awarding and the retention of
8 contracts to Drug Testing Corporation for drug test cups at
9 MDOC facilities in violation of Section 666(a)(2), Title 18,
10 United States Code.

11 12: It was the object of the conspiracy that
12 defendant, Mark Longoria, would bribe or provide kickbacks to
13 Christopher B. Epps by the use of Cecil McCrory's company,
14 Investigative Research, Inc., in exchange for the awarding and
15 the retention of contracts to Drug Testing Corporation for drug
16 testing cups at MDOC facilities.

17 Paragraph 13: In furtherance of the conspiracy and to
18 carry out its objectives, the following acts among others were
19 committed.

20 14: On September 16, 2013, the defendant, Mark
21 Longoria, through Drug Testing Corporation paid Investigative
22 Research, Inc., a \$194,834.50 (sic) commission fee knowing that
23 Cecil McCrory would provide Christopher B. Epps with cash
24 payments out of the fee in exchange for the influence of
25 Christopher B. Epps as commissioner of MDOC to benefit Longoria

1 and his company, Drug Testing Corporation, financially.

2 15: On June 17, 2014, the defendant, Mark Longoria,
3 through Drug Testing Corporation paid Investigative Research,
4 Inc., a \$34,997.64 commission fee knowing that Cecil McCrory
5 would provide Christopher B. Epps with cash payments out of the
6 fee in exchange for the influence of Christopher B. Epps as
7 commissioner of MDOC to benefit Longoria and his company, Drug
8 Testing Corporation, financially, all in violation of Section
9 371, Title 18, United States Code.

10 Thereafter is a Notice of Intent to Seek Criminal
11 Forfeiture. As a result of committing the offense alleged in
12 this criminal information, the defendant -- and, by the way, I
13 substituted "criminal information" for "indictment" -- the
14 defendant shall forfeit to the United States all property
15 involved in or traceable to property involved in the offense,
16 including, but not limited to, all proceeds obtained directly
17 or indirectly from the offense and all property used to
18 facilitate the offense. The defendant shall forfeit a money
19 judgment in the amount of \$131,389.90.

20 Further, if any property described above as a result
21 of any act or omission of the defendant, (a) cannot be located
22 upon the exercise of due diligence, (b) has been transferred or
23 sold to or deposited with a third party, (c) has been placed
24 beyond the jurisdiction of the court, (d) has been
25 substantially diminished in value, or (e) has been commingled

1 with other property which cannot be divided with (*sic*)
2 difficulty, then it is the intent of the United States to seek
3 a judgment of forfeiture of any other property of the defendant
4 up to the value of the property described in this notice or any
5 bill of particulars supporting it. All pursuant to Section
6 981(a)(1)(A) and (C), Title 18, United States Code, and Section
7 2461, Title 28, United States Code.

8 Now, will the defendant return to the podium.

9 (COMPLIED WITH REQUEST)

10 THE COURT: Now, did you hear my reading of the
11 criminal information?

12 THE DEFENDANT: Yes, sir, your Honor.

13 THE COURT: And do you understand the charge against
14 you?

15 THE DEFENDANT: Yes, sir, your Honor.

16 THE COURT: Any questions about this charge?

17 THE DEFENDANT: No, sir, your Honor.

18 THE COURT: And have you discussed this charge in its
19 entirety with your lawyer?

20 THE DEFENDANT: Yes, sir, your Honor.

21 THE COURT: You were charged under Title 18, United
22 States Code, Section 371. That code section makes it a crime
23 for anyone to conspire with someone else to commit an offense
24 against the laws of the United States. You were charged with
25 conspiring to knowingly and corruptly give or agree to give

1 anything of value -- one second.

2 (PAUSE)

3 THE COURT: You were charged in the criminal
4 information, in summary, with actions that are addressed in
5 paragraph 11, that you knowingly and intentionally entered a
6 conspiracy to influence or reward Christopher B. Epps through
7 the efforts of Cecil McCrory regarding transactions of the
8 Mississippi Department of Corrections involving something of
9 value of \$5,000 or more, that is, the awarding and retention of
10 contracts to Drug Testing Corporation for drug test cups at
11 MDOC facilities.

12 This conspiracy which is alleged here comports to
13 combine the criminal actions of yourself, Christopher Epps, and
14 Cecil McCrory. So then the government is saying here by this
15 criminal information that this was an illegal agreement, and it
16 then is raised to the level of a criminal conspiracy.

17 Now, conspiracy is an agreement between two or more
18 persons to join together to accomplish some unlawful purpose.
19 It is a kind of partnership in crime in which each member
20 becomes the agent of every other member. If you were to decide
21 that you want a trial, then I would allow that trial. And then
22 at the end of all of the evidence, I would instruct the jury,
23 as I am now instructing you on these points, what a conspiracy
24 is.

25 So I will tell the jury that *Before you can find this*

1 *defendant guilty of conspiracy regarding these matters, you*
2 *must be convinced that the United States Attorney's Office has*
3 *proved the following by proof beyond a reasonable doubt. Proof*
4 *beyond a reasonable doubt.*

5 First, that the defendant and at least one other
6 person made an agreement to accept or agree to accept anything
7 of value from any person intending to be influenced or rewarded
8 in connection with any business transaction or series of
9 transactions of such organization, government or agency
10 involving anything of value of \$5,000 or more as charged in the
11 information;

12 Secondly, that you knew the unlawful purpose of the
13 agreement and joined in it willfully, that is to say, that you
14 joined in the thrust of the alleged conspiracy with the intent
15 to further its illegal purpose;

16 Thirdly, that one of the conspirators during the
17 existence of the conspiracy knowingly committed at least one of
18 the overt acts described in the information in order to
19 accomplish some object or purpose of the conspiracy.

20 So then when we talk about this point raised lastly,
21 that one -- that -- that one of the conspirators during the
22 existence of the conspiracy must have knowingly committed at
23 least one of the overt acts described in the criminal
24 information, we turn our attention to paragraph 13 and
25 thereafter. So look at the criminal information where it says

1 in paragraph 13, "In furtherance of the conspiracy and to carry
2 out its objectives, the following acts, among others, were
3 committed." And then you see 14 on through. I read those
4 before for you.

5 But in order for the prosecution to prove this
6 conspiracy charge, the prosecution has to prove the object of
7 the conspiracy, which is in paragraph 12, the overt acts which
8 come 13 -- paragraph 13 and below. And so paragraph 13 and
9 thereafter describe -- purport to describe what your conduct
10 was with regarding this alleged conspiracy. And then that
11 section ends by charging that all this is a violation of
12 Section 371, Title 18, United States Code, the conspiracy
13 statute.

14 So, then, we return to what a conspiracy is and how
15 such is formed. One may become a member of a conspiracy
16 without knowing all the details of the unlawful scheme. One
17 may become a member of a conspiracy without knowing all the
18 details of the unlawful scheme or the identities of all the
19 other alleged conspiracies -- conspirators.

20 If a defendant understands the unlawful nature of a
21 plan or scheme and knowingly and intentionally joins in that
22 plan or scheme on one occasion, that is sufficient to convict
23 him for conspiracy even though the defendant had not
24 participated before and even though the defendant played only a
25 minor part.

1 The government need not prove that the alleged
2 conspirators entered into any formal agreement, nor that they
3 directly stated between themselves all the details of the
4 scheme. Similarly, the government need not prove that all of
5 the details of the scheme alleged in the criminal information
6 were actually agreed upon or carried out, nor must it prove
7 that all of the persons alleged to have been members of the
8 conspiracy were such or that the alleged conspirators actually
9 succeeded in accomplishing their unlawful objectives.

10 Mere presence at the scene of an event even with
11 knowledge that a crime is being committed or the mere fact that
12 certain persons may have associated with each other and may
13 have assembled together and discussed common aims and interests
14 does not necessarily accomplish proof of the existence of a
15 conspiracy. Also, a person who has no knowledge of a
16 conspiracy but who happens to act in a way which advances some
17 purpose of a conspiracy does not thereby become a conspirator.

18 So, then, a conspiracy is an agreement between two or
19 more persons to join together to accomplish some unlawful
20 purpose. It is a kind of partnership in crime in which -- in
21 which each member becomes the agent of every other member.

22 Now, do you have any questions on what a conspiracy
23 is?

24 THE DEFENDANT: No, sir, your Honor.

25 THE COURT: And pay attention to this particular

1 element of scienter, that is, whether one has a criminal
2 intent. That the defendant knew the unlawful purpose of the
3 agreement and joined in it willfully, that is, with the intent
4 to further the unlawful purpose.

5 Now, those are the elements of a conspiracy. And in
6 order to prove this charge under Section 371, the prosecution
7 has to prove those three elements I read to you and has to
8 prove each one of the three elements by proof beyond a
9 reasonable doubt. Do you understand that?

10 THE DEFENDANT: Yes, sir, your Honor.

11 THE COURT: Any questions?

12 THE DEFENDANT: No, sir, your Honor.

13 THE COURT: Let's talk about the penalty. Do you know
14 what's the maximum penalty that the court can impose upon you
15 for this crime?

16 THE DEFENDANT: I believe, your Honor, it's up to five
17 years and \$250,000 fine.

18 THE COURT: That's correct, not more than five years
19 and a fine of \$250,000. The court can also impose supervised
20 release following incarceration. Do you know what supervised
21 release is?

22 THE DEFENDANT: Yes, sir, your Honor.

23 THE COURT: Under a sentence of supervised release,
24 then you would have to serve under the probation office. And
25 the probation office will be tasked with ensuring that you

1 follow the dictates of the court with regard to certain
2 conditions, restrictions on your behavior and determining
3 whether you are in violation at any point on any of these
4 conditions or restrictions. If the court is so impressed that
5 you are, then the court will advise the probation officer to
6 secure your presence in court.

7 And then the court -- if the court finds you guilty,
8 then the court will determine what the appropriate discipline
9 should be. The court will have a wide range of disciplines at
10 its control. The court may sentence to jail, prison. The
11 court may fine. The court may place the offending party back
12 on supervised release or whatever. But the court will have a
13 wide range of discretion in how to address any offense of
14 supervised release. Do you understand that?

15 THE DEFENDANT: Yes, sir, your Honor.

16 THE COURT: Do you also understand that the court
17 requires you to pay a \$100 special assessment?

18 THE DEFENDANT: Yes, sir, your Honor.

19 THE COURT: Has that been paid?

20 MR. FORTNER: Not yet, but he has the money, your
21 Honor.

22 THE COURT: All right. Now, are there any questions
23 with regard to the maximum penalty the court could impose?

24 THE DEFENDANT: No, sir, your Honor.

25 THE COURT: Now, do you understand that this court has

1 the discretion whether to sentence you under the Sentencing
2 Guidelines Act or to sentence you under the statute? Do you
3 understand that?

4 THE DEFENDANT: Yes, sir, your Honor.

5 THE COURT: Have you been given some proposed
6 calculations under the Sentencing Guidelines Act that might
7 address your situation?

8 THE DEFENDANT: Yes, sir, your Honor. There's some
9 information outlining that that I've read.

10 THE COURT: And do you understand that I am not bound
11 by any recommendation that the prosecution or even your lawyer
12 or even you might submit to the court?

13 THE DEFENDANT: Yes, sir, your Honor.

14 THE COURT: And do you recognize that the court could
15 determine to sentence you to the maximum sentence as prescribed
16 by statute?

17 THE DEFENDANT: Yes, sir, your Honor.

18 THE COURT: Have you discussed with anyone or had an
19 understanding of a concept called relevant conduct?

20 THE DEFENDANT: Relevant conduct, your Honor?

21 THE COURT: Yes.

22 THE DEFENDANT: I don't think so, your Honor.

23 THE COURT: Let me describe what relevant conduct is.
24 You might have discussed with your attorney and with the
25 assistant United States attorney the conduct which at this

1 stage they deem to be the conduct that would underscore this
2 charge against you, this criminal information, and that if the
3 court looks at that conduct and the guidelines prescribed by
4 that conduct or the guidelines addressing that conduct, that
5 the court might sentence you to the following sentence they
6 might have suggested it.

7 But do you understand that after you have entered a
8 successful plea, I will ask the United States Probation Office
9 to prepare a presentence investigation report? Now, that
10 report will be done by the United States Probation Office.
11 Now, take a guess as to whom you think -- or for whom you think
12 the probation office works. Prosecution? Defense? Court?

13 THE DEFENDANT: The court, your Honor.

14 THE COURT: The probation officer works for the court.
15 The probation officer will not be answerable to the
16 U.S. Attorney's Office or to the defendant. That probation
17 officer is answerable only to the court.

18 So the court will make -- so the probation officer
19 will render a report on this whole matter. And in doing so,
20 the probation officer might discover or might encounter and
21 decide to include in the report some matters that you might not
22 have recognized that the prosecution will be relying upon. The
23 probation officer might include some information in that report
24 that the prosecution was not aware that the defense has in its
25 pocket and that such information might benefit you. So it goes

1 both ways.

2 The probation officer will make out a neutral report
3 of all the facts that the probation officer encounters, either
4 from documents from the prosecution or documents from your side
5 if you wish to give the probation officer such or if the
6 probation officer encounters such information through some
7 other legitimate source. And the probation officer will put
8 all this in a report.

9 And if there's some additional information in there to
10 which you have not been afforded access, then I will tell you
11 what that information is. Similarly, if there's some
12 information in there that the prosecution has not seen
13 concerning you, I will do the same thing with the prosecution
14 and tell the prosecution.

15 But with regard to this matter of relevant conduct, if
16 the probation officer in investigating this case finds some
17 other offending activity that the probation officer thinks is
18 similarly situated or of a similar thrust to this particular
19 matter, the probation officer will include that in the report.
20 And then I will ask your lawyer, the prosecution whether they
21 agree that this conduct occurred and whether the court should
22 consider this under this banner of relevant conduct. Do you
23 understand?

24 THE DEFENDANT: Yes, sir, your Honor.

25 THE COURT: And so then this could be conduct that

1 could change the address, the thrust of those calculations that
2 you were provided earlier. Do you understand that?

3 THE DEFENDANT: Yes, sir, your Honor.

4 THE COURT: And, again, I remind you that even so,
5 this court is not required to sentence you under the sentencing
6 guidelines. This court could decide not to sentence you under
7 the guidelines. The court could decide to sentence under the
8 statute. It is the court's discretion. Do you understand
9 that?

10 THE DEFENDANT: Yes, sir, your Honor.

11 THE COURT: And even though you may have a plea
12 agreement, that plea agreement is not binding on the court. So
13 you understand that.

14 THE DEFENDANT: Yes, sir, your Honor.

15 THE COURT: Any questions about any of this?

16 THE DEFENDANT: No, sir, your Honor.

17 THE COURT: Now, has anyone threatened you or forced
18 you to come here today to enter a plea of guilty?

19 THE DEFENDANT: No, sir, your Honor.

20 THE COURT: Are you entering a plea of guilty
21 voluntarily of your own free will?

22 THE DEFENDANT: Yes, sir, your Honor.

23 THE COURT: Let me turn to the prosecution. Is there
24 a plea agreement?

25 MR. LaMARCA: There is, your Honor.

1 THE COURT: All right. Discuss the plea agreement
2 with me.

3 MR. LaMARCA: Your Honor, the defendant has agreed to
4 plead guilty to the information, and the government will make
5 the recommendations that are contained within the plea
6 supplement. In addition, the plea agreement provides that the
7 defendant will waive certain rights, and he will pursuant to
8 the plea agreement waive the following rights with the
9 exception of ineffective assistance of counsel claims.

10 And those rights that he waives are the right to
11 appeal the conviction and sentence or the manner in which the
12 sentence is imposed on any ground, the right to contest the
13 conviction and sentence or the manner in which the sentence is
14 imposed in any postconviction proceeding, including, but not
15 limited to, those under 28 -- Title 28, U.S.C., Section 2255,
16 and any other type of proceeding claiming double jeopardy or
17 excessive penalty.

18 He also claims -- or -- I'm sorry -- waives any right
19 to seek attorney's fees and costs and waives any right whether
20 asserted by him or through a representative to request or
21 receive records about the case under the Freedom of Information
22 Act or the Privacy Act.

23 We request that the court confirm with the defendant
24 that he is aware that he has through his plea agreement waived
25 those rights that I've just announced to the court.

1 THE COURT: All right. Thank you. Mr. Longoria, did
2 you hear what the prosecution had to say?

3 THE DEFENDANT: Yes, sir, your Honor.

4 THE COURT: Have you entered into a plea agreement
5 with the government?

6 THE DEFENDANT: Yes, sir, your Honor.

7 THE COURT: And was that decision a voluntary and free
8 decision?

9 THE DEFENDANT: Yes, sir, your Honor.

10 THE COURT: Did you read the document that he just
11 mentioned to me, the memorandum of understanding?

12 THE DEFENDANT: Yes, sir, your Honor.

13 THE COURT: Did you read it every line?

14 THE DEFENDANT: Yes, sir, your Honor.

15 THE COURT: And with regard to those waivers, did you
16 pay attention to those waivers?

17 THE DEFENDANT: Absolutely, your Honor.

18 THE COURT: All right. I want to take your word that
19 you paid attention to the waivers. So I will not discuss all
20 the waivers again with you, but there is one I want to make
21 sure that I do discuss with you. By this document, you have
22 waived the right to appeal this sentence to any higher court
23 that the court may impose upon you. Is that correct?

24 THE DEFENDANT: Yes, sir, your Honor.

25 THE COURT: Ordinarily, a defendant may appeal an

1 imposed sentence to the next higher court. The defendant may
2 appeal the conviction as well as the sentence if the defendant
3 is convinced there was some error in either the conviction or
4 the sentence. But do you understand that under this agreement
5 you are saying that you will not seek an appeal of either the
6 conviction should you satisfactorily enter a plea of guilty
7 today or the sentence that will be imposed upon you at a later
8 date? Do you understand that?

9 THE DEFENDANT: Yes, sir, your Honor.

10 THE COURT: Do you have any questions about any of
11 that?

12 THE DEFENDANT: No, sir, your Honor.

13 THE COURT: I've already advised you that any
14 recommendation made by the prosecution is not incumbent upon
15 me, that I can sentence you to the maximum as provided by law.
16 Do you remember that?

17 THE DEFENDANT: Yes, sir, your Honor.

18 THE COURT: Now, then, at the end of your plea
19 agreement -- would you look at that end of that plea agreement,
20 please.

21 (COMPLIED WITH REQUEST)

22 THE COURT: Do you see what it says there? There are
23 five declarations there. Do you see them?

24 THE DEFENDANT: Yes, sir, your Honor.

25 THE COURT: All right. Read each one to me, please.

1 THE DEFENDANT: "Read by or to defendant. Explained
2 to defendant by defendant's attorney. Understood by defendant.
3 Voluntarily accepted by defendant and agreed to and accepted by
4 defendant."

5 THE COURT: That says that this plea agreement has
6 been, and then you read off those five elements. Is that
7 correct?

8 THE DEFENDANT: Yes, sir, your Honor.

9 THE COURT: So do you agree then those declarations
10 there are true and correct with regard to your understanding
11 and participation in this plea agreement?

12 THE DEFENDANT: Yes, sir, your Honor.

13 THE COURT: And, counsel, it also addressed some
14 conduct of the attorneys and -- the attorney. And do you agree
15 that what is stated there with regard to the attorney's conduct
16 is also true and accurate?

17 MR. FORTNER: I do agree with that, your Honor.

18 THE COURT: All right. Now, there is a plea
19 supplement. Have you seen the plea supplement?

20 THE DEFENDANT: Yes, sir, your Honor.

21 THE COURT: Now, the plea supplement is a separate
22 page -- separate document, rather. And I need to know whether
23 you've read each page of that plea supplement. Did you?

24 THE DEFENDANT: Yes, sir, your Honor.

25 THE COURT: And at the end of that plea supplement

1 there are the same five declarations that you just read. Do
2 you see them there?

3 THE DEFENDANT: Yes, sir, your Honor.

4 THE COURT: And after that there's a line for your
5 signature. Did you sign that?

6 THE DEFENDANT: I did, your Honor.

7 THE COURT: And you also signed the plea agreement.

8 THE DEFENDANT: I did, your Honor.

9 THE COURT: And, Mr. Fortner, did you sign both
10 documents?

11 MR. FORTNER: I did, your Honor.

12 THE COURT: And let me turn to the prosecution. Who
13 signed on behalf of the prosecution?

14 MR. LaMARCA: I did, your Honor.

15 THE COURT: Thank you. Would you please pass them
16 over, both documents.

17 MR. FORTNER: May I approach, your Honor?

18 THE COURT: You may.

19 (COMPLIED WITH REQUEST)

20 THE COURT: I would never get through there.

21 MR. FORTNER: I'm not going back that way.

22 (DOCUMENT TENDERED TO COURT)

23 THE COURT: Thank you. I have the plea agreement.

24 It's in four pages. Front page says "Plea Agreement." It's
25 dated August 3rd, 2016. The document is in three paragraphs on

1 the first page and there is paragraph 6 on the second page.

2 Third page, paragraph 8. Paragraph 8 concludes on page 4, and
3 then paragraph 9. Thereafter are the declarations, and
4 following that are the signatures of the parties who are here.
5 And all have affixed their signatures as 8/3/16.

6 The second document is a plea supplement. First page,
7 which is not numbered at the bottom nor at the top, it has two
8 paragraphs on it. The second page has paragraph 5 continuing
9 onto the third page. The bottom of the third page is
10 continuing with paragraph 7 and -- 7(a) and (b), continuing to
11 the top of page 4, top of -- then thereafter are paragraphs 8,
12 9, 10, continuing on to page 5, all the way down to
13 subparagraph (g), and then page 6 which ends -- at the top ends
14 with paragraph (i).

15 And thereafter are the declarations that I addressed
16 earlier. And then following that are the signatures that I
17 mentioned earlier. And the dates are all the same, 8/3/16. I
18 will make this part of the record, the plea agreement and the
19 plea supplement. The plea agreement goes -- will be a public
20 document. The plea supplement is filed specially under seal
21 pursuant to the court's internal rules.

22 Now, then, I am going to determine the factual basis
23 for your plea. By that I will ask the assistant United States
24 attorney to tell me the essential facts which undergird this
25 prosecution. Now, listen carefully, because when he finishes,

1 I'm going to ask whether you agree with his assessments and
2 statements; and, if not, you'll tell me so. So, then, why
3 don't you have a seat while then he recites whatever facts he
4 has to share with the court.

5 (COMPLIED WITH REQUEST)

6 THE COURT: Mr. LaMarca. Why don't you go behind the
7 podium, Mr. LaMarca.

8 (COMPLIED WITH REQUEST)

9 MR. LaMARCA: Yes, your Honor. Your Honor, if the
10 government were put to its burden of proof, the government's
11 evidence would show that from 2002 through 2014 Christopher
12 Epps served as commissioner of the Mississippi Department of
13 Corrections; that Drug Testing Corporation is a provider of
14 drug test cups used for drug screening MDOC inmates.

15 An investigation conducted by the FBI into the bribery
16 kickbacks and money-laundering activities of Commissioner Epps
17 revealed that on August 1 of 2013, the defendant, Mark
18 Longoria, on behalf of his company, Drug Testing Corporation,
19 entered an independent contractor agreement with Investigative
20 Research, Inc., which is a company owned by Cecil McCrory for
21 consulting services and payment of consulting fees to
22 Investigative Research based upon a fee schedule of commissions
23 for items purchased by the MDOC from Drug Testing Corporation.

24 Eleven days thereafter entering this independent
25 contractor agreement, on August 12th of 2013, the Mississippi

1 Department of Corrections awarded a contract to Drug Testing
2 Corporation that made the company the exclusive provider of
3 drug test cups to MDOC. Eight days later, on August 20th of
4 2013, Drug Testing Corporation invoiced the Mississippi
5 Department of Corrections for the sale of drug test cups in the
6 total amount of \$632,336.25.

7 Knowing that he was getting his commission from Drug
8 Testing Corporation, coconspirator Cecil McCrory agreed with
9 Mr. Epps to wire and did wire on September 4th of 2014 -- I'm
10 sorry -- 2013, \$50,000 to Epps' Edward Jones investment
11 account. Then on September 16th of 2013, after receiving
12 payment from the Mississippi Department of Corrections of the
13 \$632,336.25, Drug Testing Corporation remitted a check to
14 Investigative Research in the amount of \$194,837.50 as its
15 commission on the number of cups purchased by MDOC from Drug
16 Testing Corporation.

17 Towards the end of this one-year contract, on May 20th
18 of 2014, Drug Testing Corporation invoiced the Mississippi
19 Department of Corrections for a second sale of drug test cups
20 in the amount of \$149,940. On June 17th of 2014, after
21 receiving payment on that invoice from the MDOC, Drug Testing
22 Corporation remitted a check to Investigative Research in the
23 amount of \$34,997.64, of which \$10,000 was to be paid from
24 Mr. McCrory to Mr. Epps.

25 When confronted with this evidence, coconspirator

1 McCrory admitted that he conspired with the defendant,
2 Mr. Longoria, to manipulate the bid process in order to make
3 DTC, Drug Testing Corporation, the exclusive provider of the
4 drug test cups and to bribe Mr. Epps in relation to the sale of
5 these cups to MDOC.

6 That at all times during the life of this conspiracy,
7 MDOC received benefits in excess of \$10,000 annually for the
8 years 2013 and 2014 under federal programs that provide federal
9 assistance to MDOC, one of which was from the Office of Justice
10 Programs involving the Statewide Automated Victim Information
11 and Notification Program. This activity all took place --
12 or -- in whole or in part within the Southern District of
13 Mississippi, your Honor.

14 That would be the factual basis that the government
15 submits to the court as to this plea agreement, your Honor.

16 THE COURT: Thank you. Will the defendant and counsel
17 approach the podium.

18 (COMPLIED WITH REQUEST)

19 THE COURT: Mr. Longoria, did you hear what the
20 prosecution had to say on this matter?

21 THE DEFENDANT: Yes, sir, your Honor.

22 THE COURT: Do you disagree with any of the
23 statements?

24 THE DEFENDANT: No, sir, your Honor.

25 THE COURT: Mr. Longoria, I need to recite for the

1 record that after asking you this question whether you disagree
2 with any of these statements that you had about a five-second
3 pause. So I'll ask you again. Do you disagree with any
4 statements made by the prosecution?

5 THE DEFENDANT: No, sir, your Honor.

6 THE COURT: Mr. Longoria, the prosecution says this
7 conspiracy began in 2013. Do you agree with that?

8 THE DEFENDANT: Your Honor, in -- we entered into an
9 agreement with Investigative Research at about that time, your
10 Honor. And at that time, your Honor, I had an agreement with
11 Investigative Research, and I wasn't aware at that time that he
12 was paying any money to Commissioner Epps. I later found out
13 in May when they were placing the bridge order.

14 Basically, what the state does is they order all their
15 drug-testing products, and then we manufacture that -- you
16 know, the company that we buy it from manufactures it, and we
17 ship it every other month for them. And they pay up front so
18 that they can do the manufacturing and everything to us. Then
19 we paid Commissioner -- we paid Investigative Research the
20 commission check on the order.

21 In May when they ran out of product and they placed a
22 bridge order, I found out at that point in a conversation with
23 Investigative Research, with Cecil McCrory, he said something
24 to the effect that his commission and Commissioner Epps'.
25 That's at the point when -- when I found out that they were

1 definitely -- he was definitely paying money to the
2 commissioner.

3 THE COURT: This was in a conversation with
4 Mr. McCrory?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Was that a telephone or in-person
7 conversation?

8 THE DEFENDANT: No. It was over the phone, your
9 Honor.

10 THE COURT: Did you reject that matter or offer any
11 objection to it?

12 THE DEFENDANT: No, sir, your Honor, I did not.
13 Regrettably, I did not.

14 THE COURT: So you knew then at that point that there
15 was a kickback scheme in operation?

16 THE DEFENDANT: At that point, your Honor, that's when
17 I put two and two -- I mean, that confirmed, you know, what was
18 going on, your Honor.

19 THE COURT: Did you already have suspicions?

20 THE DEFENDANT: You know, your Honor, there was so
21 many -- every company out there that did business with the
22 state did -- hired Cecil McCrory as a consultant. So I knew
23 they had to have some type -- I didn't know the details or
24 anything like that, but I knew they had to have some type of
25 connections to be able to get all this done. And no other

1 states that I work in conducted business that way.

2 THE COURT: What other states have you worked in?

3 THE DEFENDANT: Louisiana, Arkansas, Oklahoma,
4 Virginia. Those are primarily the states that we do business
5 in.

6 THE COURT: You supply drug testing cups for them?

7 THE DEFENDANT: At -- not for Drug Testing
8 Corporation, your Honor, but for the manufacturers -- the
9 actual manufacturer, the company that made the product at that
10 time.

11 THE COURT: And you say nobody else dealt like that?

12 THE DEFENDANT: No, sir, your Honor. They had
13 consultants, but not to the effect that it was so pushed that
14 you had to use this one.

15 THE COURT: So, again, how did you come in contact
16 with McCrory? Did he contact you or you contacted him?

17 THE DEFENDANT: He contacted us.

18 THE COURT: And what was the gist of his contact?

19 THE DEFENDANT: When -- you know, during different
20 conferences, ACA, APPA, different conferences, prison
21 conferences and things like that, I was introduced to Cecil
22 McCrory. And they just said this is the consultant, you know,
23 that the state primarily uses. And we entered into
24 conversations about the drug testing products and what our
25 company has to offer the state.

1 THE COURT: So when you say he was a consultant for
2 the state, why did you need a consultant instead of going
3 directly to the prison?

4 THE DEFENDANT: I don't know, your Honor.

5 THE COURT: You thought you needed one?

6 THE DEFENDANT: Absolutely, your Honor, in --

7 THE COURT: Were you told you needed one?

8 THE DEFENDANT: Absolutely, your Honor, in
9 Mississippi.

10 THE COURT: Mississippi says you had to have a
11 consultant?

12 THE DEFENDANT: You know, the -- pretty much everybody
13 that did business in Mississippi used the same consultant, your
14 Honor. So I assumed that if we were going to get the business,
15 I had to use Investigative Research, Cecil McCrory.

16 THE COURT: And so you're saying everybody who did
17 business with the penitentiary had to go through him?

18 THE DEFENDANT: To my understanding, your Honor.

19 THE COURT: So then did you have to pay him an upfront
20 fee.

21 THE DEFENDANT: No, sir, your Honor.

22 THE COURT: So, then, what was he to get out of it
23 from when you all first began this enterprise?

24 THE DEFENDANT: He would only -- he would only get
25 paid if we did any business with the state, if we were awarded

1 any business and they ordered product from us. He got paid a
2 straight commission on exactly the per number of cups that the
3 state ordered.

4 THE COURT: So, then, who ordered the number of cups?

5 THE DEFENDANT: The -- Rick McCarty, the procurement
6 person for the -- the state put out a bid on a BidNet. And
7 once that was awarded, Rick McCarty, the purchasing agent,
8 ordered the whole year's worth of product which was -- that
9 was -- the \$632,336.25 was the whole year's worth of product
10 that they ordered from us.

11 THE COURT: Did you have competitors?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: How many?

14 THE DEFENDANT: Three competitors -- two competitors
15 on the bid, your Honor. But competitors in that marketplace,
16 your Honor, that have access to our product, you know, the
17 product that I used, there's hundreds of competitors out there
18 that -- that sell that type of product.

19 THE COURT: So you expected this to be a competitive
20 bidding situation.

21 THE DEFENDANT: Yes, sir, your Honor.

22 THE COURT: And so, then, did you have someone
23 primarily who would determine what your appropriate bid should
24 be?

25 THE DEFENDANT: We went basically off of what we

1 thought would be a competitive price based on the previous
2 year's purchasing of that product, of that same product. So we
3 discounted it down from the previous vendor.

4 THE COURT: And do you know why the previous vendor
5 was no longer the go-to person?

6 THE DEFENDANT: Your Honor, they were buying off of a
7 GSA contract. Basically, the GSA contract or VA/GSA contract
8 is where that product is available at a set price. And any
9 state -- any government agency can buy off of that. And I was
10 told that they couldn't -- they couldn't any longer buy that
11 way and that it had to go out to bid.

12 THE COURT: Do you know whether that was an accurate
13 statement?

14 THE DEFENDANT: Sir?

15 THE COURT: Was that a truthful statement?

16 THE DEFENDANT: Yes, sir, your Honor.

17 THE COURT: It had to go to bid?

18 THE DEFENDANT: That's what I was told, your Honor.

19 THE COURT: What I'm saying is you were told that, but
20 do you know whether that was a truthful statement?

21 THE DEFENDANT: Oh, no, sir, your Honor.

22 THE COURT: You don't know.

23 THE DEFENDANT: No, sir, your Honor.

24 THE COURT: So, then, something else was said during
25 the time that the prosecution submitted some facts before me

1 concerning this matter. It says that through a manipulative
2 bid process that you gained the contract. What was the
3 manipulation?

4 MR. FORTNER: Can I have just one minute, Judge?

5 THE COURT: Okay.

6 (COUNSEL AND DEFENDANT CONFERRED)

7 MR. FORTNER: Thank you, your Honor.

8 THE COURT: Okay.

9 THE DEFENDANT: Your Honor, the manipulative -- the
10 statement that they were saying about the bid, there are
11 recordings, your Honor, where Cecil McCrory and I are talking
12 about bid specifications that will lock out China-made product.
13 The state -- the incumbent product that they were using was the
14 same product that we intended to bid, and so that product met
15 specific specifications.

16 So since there was never a bid for this product
17 before, we were discussing bid specifications that would allow
18 them to buy American-made product, the product -- the incumbent
19 product versus China-made product that would go in there at
20 half the price, you know, half the quality, half the price. So
21 there was information in there about SAMSHA-certified
22 laboratories doing confirmation testing for any positives and
23 that -- that type of thing for the bid specifications, your
24 Honor.

25 THE COURT: All right. I see. Thank you. So then

1 with regard to what Mr. LaMarca said about this whole
2 procedure, then you're telling me you agree with him.

3 THE DEFENDANT: Yes, sir, your Honor.

4 THE COURT: So then I ask you, with regard to the
5 criminal information, the charge under 371, how do you plead,
6 guilty or not guilty?

7 THE DEFENDANT: Guilty, your Honor.

8 THE COURT: Then, Mr. Longoria, since you're pleading
9 guilty to the charge in the indictment -- excuse me -- the
10 charge in the criminal information, since you know what the
11 maximum possible punishment is and since you're voluntarily
12 pleading guilty, I will accept your plea of guilty as to the
13 count in the criminal information and I hereby enter a judgment
14 against you as to that count.

15 I will sentence you on October 13, 2016, at 9:30 a.m.
16 That date is October 13, 2016, at 9:30 a.m. Meanwhile, I'm
17 going to ask the United States Probation Office to prepare its
18 presentence investigation report on you. Now, I will use this
19 report to determine what is the appropriate sentence.

20 And the probation officer in securing all the
21 information in that report will need to talk to you. And I
22 urge you to cooperate. But, now, if the probation officer
23 happens to ask you any question that could incriminate you on
24 any other matters, you have a right to refuse to answer. But
25 you will have your lawyer present with you during the entire

1 time of the interview, and so then you need to consult with
2 your attorney as to whether you should answer a question or not
3 answer it. Do you understand that?

4 THE DEFENDANT: Yes, sir, your Honor.

5 THE COURT: Before you come here for sentencing on
6 October 13, 2016, you are to read the presentence investigation
7 report in its entirety. Now, I'm going to read every last word
8 of this report. So you need to read it yourself. In fact, I'm
9 going to ask at the start of the hearing whether you've read
10 each and every line of this report.

11 If you tell me that you haven't, then I'm going to
12 have to recess so that you can read it. But if you haven't
13 read it and there appears to be some information there to which
14 you take objection and feel should not be seen by me, then keep
15 in mind that it will be your fault if I read it, because you
16 should read it preliminarily before you come here. Do you
17 understand that?

18 THE DEFENDANT: Yes, sir, your Honor.

19 THE COURT: And discuss it thoroughly with your lawyer
20 in all respects. Do you understand that?

21 THE DEFENDANT: Yes, sir, your Honor.

22 THE COURT: Do you have any questions about that?

23 THE DEFENDANT: No, sir, your Honor.

24 THE COURT: Now, let's talk about the defendant's
25 liberty situation. Prosecution.

1 MR. LaMARCA: Your Honor, the defendant is on an
2 unsecured bond of \$10,000. The prosecution would recommend
3 that he be continued on that same bond at least through the
4 date of sentencing with evaluation at that point in time as to
5 what the court wants to do at that point.

6 THE COURT: All right. And, Mr. Fortner, are you
7 making that request?

8 MR. FORTNER: I am, your Honor. And I'd point out for
9 the court that I've had absolutely no problem maintaining
10 contact with Mr. Longoria or with him maintaining contact with
11 me. He's come here to the state whenever I needed him to.
12 He's been very cooperative at -- very cooperative with the
13 marshal service and the probation/parole. So I would ask you
14 to consider maintaining his release at this time.

15 THE COURT: Mr. Longoria, I'm going to follow those
16 recommendations. I'm going to allow you to remain free under
17 the same conditions you are now under. Do you understand,
18 though, that you are to be here on the date I previously
19 announced?

20 THE DEFENDANT: Absolutely, your Honor.

21 THE COURT: Do you further understand that you are not
22 to commit any crimes? Otherwise, you'll be brought here
23 earlier. Do you understand that?

24 THE DEFENDANT: Absolutely, your Honor.

25 THE COURT: Or even if you violated conditions and

1 restrictions on the bond, do you understand that you'd be
2 brought here earlier?

3 THE DEFENDANT: Yes, sir --

4 THE COURT: Do you understand that?

5 THE DEFENDANT: -- your Honor.

6 THE COURT: Now, Mr. Longoria, I don't know whether
7 you are a hunter or a marksman or have some affinity for
8 firearms, but you have now been convicted of a felony. And
9 since you are convicted of a felony or a felon, you cannot
10 possess any type of firearm no matter what kind of firearm,
11 whether it's a pistol, a rifle, shotgun, any type of firearm.

12 Further, that you cannot possess this firearm for any
13 lawful reason. That includes hunting. That includes
14 self-protection. That also includes gun collecting. This
15 prohibition on a firearm also reaches over and embraces
16 ammunition. So you cannot have firearm ammunition either. So
17 if you are ever apprehended with firearms or firearm
18 ammunition, then you would be subject to prosecution.

19 And let me further explain that with regard to having
20 something in your possession means possessing an item either
21 actually or constructively. "Actually" means that you have it
22 on your person, in your hands. "Constructive possession" is
23 having a firearm or ammunition in an area over which you have
24 control from which you may readily obtain the item.

25 That means you can't have it in your car, you can't

1 have it in your house, you can't have it in a shed behind the
2 house or anywhere that fits that definition I've just given to
3 you. Lastly, this prohibition on your having a
4 firearm/ammunition will last for the rest of your life. Do you
5 understand that?

6 THE DEFENDANT: Yes, sir, your Honor.

7 THE COURT: So, then, if you have a firearm in your
8 household now, talk to Mr. Fortner. He will tell you how to
9 dispose of the firearm, whether it's in your house or car or
10 anywhere else over which you have control. So make sure you
11 talk to him about this because if you are apprehended with a
12 firearm, then you'll be facing a strict punishment for such.
13 Now, do you understand?

14 THE DEFENDANT: Yes, sir, your Honor.

15 THE COURT: All right. Now, from the prosecution, is
16 there anything else?

17 MR. LaMARCA: I don't believe so, your Honor.

18 THE COURT: Thank you. Let me turn to probation.
19 Anything from probation?

20 PROBATION OFFICER: I just need the defendant to sign
21 a few forms, your Honor.

22 THE COURT: Okay. And she'll need you to sign a few
23 forms. Mr. Fortner, anything else?

24 MR. FORTNER: No, your Honor, nothing else.

25 THE COURT: Then I'll see you all back here

1 October 13, 2016, at 9:30 a.m.

2 MR. FORTNER: Thank you, your Honor.

3 THE COURT: All right. Thank you.

4 (HEARING CONCLUDED)

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1 CERTIFICATE OF REPORTER
2

3 I, MARY VIRGINIA "Gina" MORRIS, Official Court
4 Reporter, United States District Court, Southern District of
5 Mississippi, do hereby certify that the above and foregoing
6 pages contain a full, true and correct transcript of the
7 proceedings had in the aforementioned case at the time and
8 place indicated, which proceedings were recorded by me to
9 the best of my skill and ability.

10 I certify that the transcript fees and format
11 comply with those prescribed by the Court and Judicial
12 Conference of the United States.

13 This the 10th day of August, 2016.
14

15 s/ Gina Morris
16 U.S. DISTRICT COURT REPORTER
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